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ATLANTIC STRIPED BASS CONSERVATION ACT AMENDMENTS OF 1986

APRIL 24 (legislative day, APRIL 21), 1986.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1813]

The Committee on Environment and Public Works, to which was referred the bill (S. 1813) to amend and extend the Atlantic Striped Bass Conservation Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

GENERAL STATEMENT

As reported by this Committee, S. 1813 reauthorizes the Atlantic Striped Bass Conservation Act through fiscal year 1988 and continues the authority for the Federal government to impose a moratorium on fishing for striped bass in the coastal waters of the coastal states from North Carolina to Maine. This authority currently expires on April 30, 1986. A number of other changes also are made by the bill to improve implementation of the Act.

The Atlantic Striped Bass Conservation Act was enacted in 1984 to encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass (*Morone saxatalis*). The Act recognized the importance of the striped bass as a commercial and game fish throughout its range, primarily from North Carolina to Maine. The impetus for the Act came primarily from the dramatic declines in striped bass populations during the past decade, especially in Chesapeake Bay. Prior to 1975 the Bay had been the spawning and nursery ground for approximately 90 percent of the Atlantic population.

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Commercial catches of striped bass have dropped from a record 14.7 million pounds in 1973 to barely 10 percent of that level today. The decline in the sport fishing harvest has been equally severe. Approximately 7,000 jobs and at least $220 million per year have been lost as a result. Causes for the decline in striped bass numbers are several and interconnected. Overfishing, pollution, and loss of habitat have been identified as major factors.

Chesapeake Bay stocks of striped bass have been the ones affected most severely and have shown greater changes than other stocks. In the early 1970's, as much as 90 percent of the migratory coastal stocks originated from Chesapeake Bay and its tributaries. At present, only 50 percent is from Chesapeake Bay, with the bulk of the remainder originating in the Hudson River. However, this change is due entirely to a decline in Chesapeake Bay stocks, since Hudson River stocks have remained relatively constant in numbers. The exact contribution of each stock to the coastal population at a given time and place is variable with the season and the location.

The striped bass is anadromous, spawning in freshwater streams, then migrating to estuarine or marine waters to mature. Males mature in 2 or 3 years and spend most of their lives near their natal waters. Females are slower to mature and migrate long distances along the coast before returning to spawn at the age of 5 or 6 years. Although they may migrate along the entire Atlantic Coast, female striped bass seldom venture outside coastal/territorial waters.

During their migrations, striped bass are subject to the jurisdictions of many States. Historically, State laws and regulations aimed at conserving and managing striped bass were variable, or even inconsistent among the various jurisdictions. Consequently, the Atlantic States Marine Fisheries Commission (ASMFC) was established through Public Laws 77-539 and 81-721, "[t]o promote the better utilization of the fisheries, marine and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries. . .". The ASMFC does not have the authority to establish and/or enforce laws and regulations pertaining to the fisheries with which it is concerned; therefore, the provisions contained in its fishery management plans are not binding upon the States.

The "Interstate Fishery Management Plan for the Striped Bass" (Plan), unanimously adopted by the affected ASMFC member States—Maine, New Hamsphire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina—in 1981, recognized the severe decline of striped bass populations and the need for uniform regulations, and enforcement of regulations, throughout the range of their migrations.

Congress also took note of the depleted striped bass stocks by authorizing an Emergency Striped Bass Study (ESBS) in 1979 under section 7 of the Anadromous Fish Conservation Act. This legislation, subsequently extended through fiscal year 1986 as part of the Atlantic Striped Bass Conservation Act of 1984, called for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to undertake a joint study to assess the size of the migratory

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stocks, to calculate the economic importance, to determine the cause(s) of the decline in striped bass populations, and to recommend remedial action.

Reports to Congress on the ESBS, most recently in May 1985, include the following points:

1. Stocks of striped bass are continuing to decline. Production indices for striped bass spawned in Chesapeake Bay remain at all-time lows.

2. Recreational and commercial landings of the coastal striped bass stocks have declined steadily since the early 1970's and remain at all-time lows.

3. The 1982 year class is the only dominant year class produced in Chesapeake Bay since 1970. The 1982 year class (upon which the fishery and future spawning populations now depend largely) was, however, less than one-third the size of the 1970 year class.

4. Substantial mortality during early life stages of striped bass in Chesapeake Bay is caused by pollution, often in combination with other factors, which degrades or destroys habitat. Larval striped bass have been found to be very susceptible to toxicants such as arsenic, cadmium, copper, aluminum, and malathion.

5. High levels of acid during heavy spring runoff dissolve high amounts of aluminum from the soil. The combination of high acidity and high levels of aluminum is lethal to newly hatched striped bass.

6. Chlorinated effluents from sewage treatment plants and electric power stations adversely affect zooplankton populations, leading to starvation of newly hatched striped bass that depend on zooplankton for their initial food.

7. Mortality factors during early life stages of striped bass act independently of the density of the population; therefore, the number of fish surviving to the juvenile stage, and subsequently to adult, is directly related to the number of eggs. The greater the number of eggs produced, the greater will be the population of adult fish produced from those eggs.

8. Mortality due to fishing is the major factor acting on the numbers of striped bass once they reach juvenile size. Heavy fishing on striped bass populations, before they reach spawning size (18–23 inches) can drastically reduce the number of eggs produced. Prior to 1981, no state protected striped bass over 18 inches in length; therefore, a large population never had the opportunity to reproduce.

9. Control of fishing so as to allow most female striped bass to spawn at least once will produce direct, predictable increases in striped bass populations. Control of mortality due to fishing is possible immediately, while control of mortality due to pollution and loss of habitat is more difficult to attain and less predictable in net effect. It is apparent, however, that stress from toxic materials can inhibit restoration no matter what the exact effect on individual striped bass or the population as a whole.

In short, management measures to reduce fishing mortality, if stringent enough, are capable of reversing the downward trend in

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striped bass numbers even if the principal cause for that decline is not fishing pressure. Recognizing this, the ASMFC amended the 1981 Plan in December 1983 by the addition of a provision calling for a 55 percent reduction in fishing effort and mortality due to fishing in order to retain adequate numbers of spawning fish. This provision was accepted by all members of the ASMFC, as well as the Potomac River Fisheries Commission and the District of Columbia. However, the ASMFC still lacked any means of ensuring that the States actually adopted the regulations necessary to comply with these new requirements.

In 1984 Congress enacted the Atlantic Striped Bass Conservation Act to provide a mechanism that would protect striped bass stocks by giving the States a choice of either complying with and enforcing the amended Plan or of having the Federal government impose a moratorium on fishing for striped bass in their coastal waters. The ASMFC was directed by the Act to make the determination and report to the Secretary of Commerce on whether each coastal State had complied with the amended Plan.

In July 1985 the ASMFC reported to the Secretary of Commerce that all States had adopted, or would adopt shortly measures necessary to implement the Plan fully, including the requirement to reduce fishing mortality by 55 percent. However, the Plan provided no clear-cut way of determining whether or not a State had taken sufficient steps to be in compliance. Informal reports from the Fish and Wildlife Service indicated that several States were not, in fact, in compliance.

A hearing was held by the Subcommittee on Environmental Pollution on July 19, 1985 for purposes of reviewing information obtained, actions taken to date, and for determining the need and direction of future actions concerning striped bass stocks and legislation pertaining to them. S. 1813, a bill to amend and extend the Striped Bass Conservation Act, was introduced in October, 1985, in response to the findings of the July hearing. As introduced, S. 1813 would have required the ASMFC to decide in June, 1987, whether or not the States had complied with the Plan. Findings of non-compliance were to be transmitted to the Secretaries of Commerce and the Interior immediately; thereafter, reports would have been made to the Secretaries at six-month intervals. The bill, as introduced, would have allowed either the Secretary of the Interior or the Secretary of Commerce to impose a moratorium on fishing in a given state regardless of the findings of the ASMFC concerning compliance or enforcement. Responsibility for lifting a moratorium would have been shifted from the ASMFC to the Secretaries.

Also in October 1985, Amendment #3 was added to the Plan, in an attempt to further reduce fishing mortality on critically important year classes of Chesapeake Bay stocks. The objective of Amendment #3 is "that the States prevent directed fishing mortality on at least 95 percent of the 1982 year class females, and females of all subsequent year classes of Chesapeake Bay stocks until 95 percent of the females of these year classes have an opportunity to reproduce at least once." In order to achieve this objective, a time table for imposition of size limits was approved with no dissenting votes by the Striped Bass Board of the ASMFC. All affected States are represented on this board. If all states comply with the

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terms of Amendment #3 and the size limit schedule, no female striped bass under 33 inches in length of Chesapeake Bay stock may be taken after July 1987. Specifically, the time table for imposition of minimum size limits is as follows:

	Inches
February–April 1986	24
May–July 1986	25
August-October 1986	29
November 1986–January 1987	30
February–July 1987	31
August 1987–April 1988	33

States were directed to institute the recommended size limits so as to stay ahead of the growth in length of the 1982 year class from Chesapeake Bay stocks. Seasonal closures, total closures, and elimination of allowable bycatch of fish below minimum lengths were additional management measures approved for use in conjunction with size limits to accomplish protection of the target year classes.

Because the time table for instituting size limits provides a clear-cut mechanism by which the ASMFC can determine compliance and adequacy of enforcement, S. 1813 was amended to allow the ASMFC to continue to be solely responsible for determining whether or not each state was complying with the Plan and enforcing it satisfactorily. S. 1813, as amended by the Committee, however, does specify that the time table for size limits is part of the Plan, provides for annual determinations on State compliance and enforcement, extends the authorization of appropriations for the Act and the ESBS through fiscal year 1988, and recognizes the participation of the Fish and Wildlife Service in striped bass restoration programs by including the Secretary of the Interior in decisions to impose a fishing moratorium. The amendments to the Act in this legislation are intended to provide for coherent, continuing management of the stocks of striped bass that migrate through the waters of Atlantic Coast states, while retaining traditional State-Federal roles and responsibilities for fisheries management.

Section-by-Section Analysis

SECTION 1. DEFINITIONS

Section 1 of S. 1813 amends the definitions of the terms "coastal waters", "coastal States" and "Plan" under section 3 of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note). The term "coastal waters" is amended to include under the Act those waters within the jurisdiction of the District of Columbia and those waters of the Potomac River within the jurisdiction of the Potomac River Fisheries Commission. The term "coastal State" is amended to include under the Act both the District of Columbia and the Potomac River Fisheries Commission.

The District of Columbia has jurisdiction over the entire width of the Potomac River within the District boundaries, as well as over other waters such as the Anacostia River. The District has established a fisheries department which is responsible for managing those fish within its jurisdiction. The Potomac River Fisheries Commission was established by an interstate compact between the States of Virginia and Maryland and has jurisdiction over the

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mainstream of the Potomac River from the southern boundary of Maryland and the District of Columbia downstream to the mouth of the river at Chesapeake Bay. The Commission consists of representatives from government and industry. Its regulations have the force and effect of law and are enforced by either Maryland or Virginia. Neither State may act independently on matters pertaining to Potomac River fisheries under the terms of the compact.

The amendments recognize the participation of the District of Columbia and the Potomac River Fisheries Commission on the Atlantic States Marine Fisheries Commission's Striped Bass Management Board and Striped Bass Scientific and Statistics Committee. The amendments also recognize that the broad restoration and management goals of the Act can only be met if the Potomac River fisheries and spawning-nursery areas are brought under the provisions of the Act.

The definition of the term "Plan" under section 3, paragraph 7 of the Act is amended to ensure that the time table for instituting size limits on all females of the 1982 and subsequent year classes of Chesapeake Bay stocks is considered part of the Plan, which the coastal states are required to implement and enforce. Additionally, because the ASMFC's Plan distinguishes between so-called "producing areas", such as Cheapeake Bay, and other coastal waters, the amendment also is meant to clarify that the time table for size limits applies to the taking of these fish in any coastal waters, as those waters are defined in the Act; i.e., it applies to Chesapeake Bay stocks of female striped bass taken both in producing areas and in other coastal waters. The ASMFC's Striped Bass Board approved this time table for size limits as one of the principal means of implementing Amendment #3. Other management measures which, in combination with instituting size limits, would achieve this goal are seasonal and total closures of striped bass fisheries and elimination of any allowable bycatch of striped bass below minimum lengths. Neither the definition of the term "Plan" nor the amendment incorporating the description of the time table for size limits is intended to prevent the ASMFC from revising the Plan.

SECTION 2. COMMISSION FUNCTIONS

Section 2 of S. 1813 amends section 4 of the Act to require the ASMFC to determine on an annual basis, beginning in December 1986, whether each coastal State has (1) adopted all regulatory measures necessary to fully implement the Plan and (2) enforced the Plan satisfactorily. The ASMFC further is required to notify the Secretaries of Interior and Commerce immediately of each negative determination made at that time. The Act required the ASMFC to make a one-time finding, in June 1985, on compliance and to monitor and report on enforcement twice a year.

The time table for size limits requires the States to increase gradually the minimum-sized striped bass that can be kept. Consequently, the bill amends the Act to require annual determinations by the ASMFC to make sure that the States stay on the required schedule for instituting these size limits. Compliance with the time table for size limits will likely occur in one or two jumps from the

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current size restrictions. The intent is only that the States stay ahead of the time table to prevent directed fishing mortality on the 1982 and subsequent year classes. The timing of the determinations required by the ASMFC, therefore, is set to coincide with the two probable steps the States will take in instituting the size limits (i.e., 31 inches by the end of 1986 and 33 inches by the end of 1987) and with the scheduling of the ASMFC's annual meeting each fall. The bill requires the ASMFC to determine annually, rather than biannually, whether each coastal State is enforcing the Plan satisfactorily. The reduced frequency of these determinations is not intended to suggest that these determinations are judged less important or that scrutiny of each State's enforcement by the ASMFC should be reduced. Instead, it is intended to reduce the burden on the States and the ASMFC of producing a report every six months. The effort saved in this regard should be directed toward measures to ensure satisfactory enforcement and monitoring of enforcement.

Section 2 of S. 1813 also amends the current requirement under section 4(d) of the Act that the Secretary of Commerce determine whether a State is in compliance with the Plan, after having been notified by the Commission that a State has not taken the necessary actions to comply with the Plan or has not enforced the Plan satisfactorily. The amendment requires that that determination be made jointly by the Secretary of Commerce and the Secretary of the Interior. Similarly, after making this determination, the amendment requires that the Secretaries jointly declare a moratorium after joint consideration and review of the comments of the ASMFC and the coastal State in question. Joint decisions and actions by the Interior and Commerce Departments are appropriate because Federal responsibilities, expertise and participation in striped bass management are shared equally by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

The joint determination by the Interior and Commerce Secretaries on whether a coastal State is in compliance with the Plan or enforcing it satisfactorily still must be made within the 30-day period established by the Act. This requirement imposes a statutory deadline which takes precedence over the requirements that might otherwise be imposed by the National Environmental Policy Act (*Flintridge Development Co.* v. *Scenic Rivers Assoc.* of Oklahoma, 426–U.S. 776 [1976]). The Secretaries' failure to act within the 30-day period should be considered a final agency action reviewable in U.S. District Court. Moreover, the Secretaries should not substitute their management judgment for that of the ASMFC's when it comes to evaluating the adequacy of compliance and/or enforcement by a coastal State. Once the ASMFC has notified the Secretaries that a coastal State has not complied with the Plan or enforced it satisfactorily, the Secretaries should declare a moratorium on fishing for Atlantic striped bass in that State's coastal waters unless there is presented compelling evidence of a major factual error or other substantial consideration that would warrant reversing the ASMFC's determination. In short, little discretion is available to the Secretaries in making a determination to impose a moratorium in response to the ASMFC's determination.

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SECTION 3. MORATORIUM

Section 3 of S. 1813 amends section 5(a) of the Act to require that the ASMFC notify both the Secretary of the Interior and the Secretary of Commerce that a coastal State has taken appropriate remedial action with respect to those things that caused the moratorium to be declared. This amendment brings section 5 of the Act into conformance with the revisions to section 4 made by S. 1813 which establish the Secretary of the Interior and the U.S. Fish and Wildlife Service as full and equal Federal partners in management of the striped bass.

SECTION 4. AUTHORIZATION OF APPROPRIATIONS

Section 4 of S. 1813 extends the current authorization of appropriations through fiscal year 1988.

SECTION 5. EFFECTIVE PERIOD

Section 5 of S. 1813 removes the current provision under section 9 of the Act which requires that sections 1 through 8 of the Act shall cease to have force and effect 18 months after the date of enactment. Instead, section 9 of the Act is amended to make the effective period of the legislation coincide with the period for which appropriations are authorized.

SECTION 6. FUNDING OF STRIPED BASS STUDIES

Section 6 of S. 1813 amends section 7(d) of the Anadromous Fish Conservation Act to extend authorization for funding of the Emergency Striped Bass Study through fiscal year 1988. Continuation of this study will allow additional research to monitor reproduction, stock size, the relative contributions of various sources to the total stock, and the effects of various factors (e.g. toxic materials, fishing pressure, the effects of regulations) on the size of the total stock.

HEARINGS

The Subcommittee on Environmental Pollution conducted an oversight hearing on July 19, 1985. The bill, S. 1813, was introduced on October 30, 1985.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

The bill was ordered reported on March 20, 1986, by a rollcall vote of 13 to 0.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 26, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1813, a bill to amend and extend the Atlantic Striped Bass Conservation Act, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1813.
2. Bill title: To amend and extend the Atlantic Striped Bass Conservation Act, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, March 20, 1986.
4. Bill purpose: S. 1813 would make technical amendments to Public Law 98-613, the Atlantic Striped Bass Conservation Act, and would authorize funding for programs under the act through fiscal year 1988. The bill would also reauthorize Section 7 of the Anadromous Fish Conservation Act at its current annual level of $1 million over the same period.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	3.0	3.0			
Estimated outlays	2.4	3.0	0.6		

The costs of this bill fall within budget function 300.

Basis of Estimate: For purposes of this estimate, it is assumed that S. 1813 would be enacted during fiscal year 1986. Based on information from the Departments of Commerce and the Interior, CBO estimates that about $2 million a year would be required in 1987 and 1988 for federal agencies' activities authorized by the Atlantic Striped Bass Conservation Act, primarily for the comprehensive annual surveys required by Section 6 of the act. The Secretary's study required by Section 8 of that act has been completed, and no additional funds are estimated to be necessary for this purpose.

No sums are included in the estimate for the Atlantic States Marine Fisheries Commission, whose activities are funded by its member states. In addition, no funds have been included in the above table for any potential federal enforcement activities under Section 5 of the act, relating to the declaration of a federal morato-

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rium on striped bass fishing. In the event that the provisions of Section 5 are invoked, additional federal costs may be incurred, but these cannot be estimated at this time.

6. Estimated cost to State and local governments: The extension of the Atlantic Striped Bass Conservation Act will not impose any additional costs on the affected coastal states.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

Changes in Existing Law

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

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